

REMARKS

The present Amendment is in response to the Official Action mailed March 28, 2007. Claims 1 and 20 have been amended, and claims 2, 3, 11-19, 22, 24, 25, 27, 28, 31, and 32 have either been previously canceled or are canceled herein. Therefore, claims 1, 4-10, 20, 21, 23, 26, 29, and 30 remain currently pending in the present application. The present Amendment is being submitted with a Request for Continued Examination. The following sets forth Applicants' remarks pertaining to the currently pending claims and the outstanding Action.

In the Official Action, the Examiner once again rejected certain of the claims in view of U.S. Patent No. 6,855,166 to Kohrs ("Kohrs"). Specifically, the Examiner rejected claims 1, 2, 5-10, and 20-32 under 35 U.S.C. § 102(e) as being anticipated by Kohrs and claim 4 under 35 U.S.C. § 103(a) as being obvious over Kohrs. As in the last Action, the Examiner opined that Kohrs either teaches every one of the limitations of or renders obvious each of the currently pending claims. The Examiner essentially rejected Applicants' previously submitted arguments as not being persuasive.

In the present Amendment, both independent claims 1 and 20 have been amended to more clearly claim at least one aspect of the present invention. Although Applicants firmly believe that the previous Amendment submitted in the matter presented claims which are indeed patentable over the implant shown in Kohrs, Applicants have set forth amendments to both independent claim 1 and independent claim 20 requiring that the implant claimed therein be convexly curved on surfaces extending between both the leading and trailing ends and sides of the spacer body. This is clearly not taught by Kohrs, which only shows a convexly curved surface extending between sides of the

implant taught therein. Applicants respectfully submit that the configuration now claimed in the above-amended claims allows the creation of a spacer having a pillow shape which is conducive for cooperation within the intervertebral space of two adjacent vertebrae. This was disclosed in the specification as originally filed (see paragraphs [0033] and [0034]). Thus, none of the above-amendments constitute new matter. Because of these differences, independent claims 1 and 20, as amended, are neither anticipated nor obviated by Kohrs.

In light of all of the above, Applicants respectfully submit that the above amendments of independent claims 1 and 20 overcome any and all rejections set forth by the Examiner in view of Kohrs. Although each and every one of the dependent claims has not been discussed herein, such also constitute allowable subject matter based solely upon their dependence upon one of allowable independent claims 1 or 20. A dependent claim is necessarily narrower than an independent claim from which it properly depends. Finally, Applicants also note that certain of the other dependent claims have been cancelled herein for consistency purposes. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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